



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R10-OAR-2018-0801; FRL-9990-23-Region 10]**

#### **Air Plan Approval; OR; 2015 Ozone NAAQS Interstate Transport Requirements**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Clean Air Act (CAA) requires each State Implementation Plan (SIP) to contain adequate provisions prohibiting emissions that will have certain adverse air quality effects in other states. On September 25, 2018, the State of Oregon made a submission to the Environmental Protection Agency (EPA) to address these requirements for the 2015 ozone National Ambient Air Quality Standards (NAAQS). The EPA is proposing to approve the submission as meeting the requirement that each SIP contain adequate provisions to prohibit emissions that will significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

**DATES:** Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-OAR-2018-0801 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be

accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Claudia Vaupel at (206) 553-6121, or [vaupel.claudia@epa.gov](mailto:vaupel.claudia@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, it is intended to refer to the EPA. This supplementary information section is arranged as follows:

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### **I. Background**

On October 1, 2015, the EPA promulgated a revision to the ozone NAAQS (2015 ozone NAAQS), lowering the level of both the primary and secondary standards to 0.070 parts per million (ppm).<sup>1</sup> Section 110(a)(1) of the CAA requires states to submit, within 3 years after promulgation of a new or revised standard, SIPs meeting the applicable requirements of section

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<sup>1</sup> National Ambient Air Quality Standards for Ozone, Final Rule, 80 FR 65292 (October 26, 2015). Although the level of the standard is specified in the units of ppm, ozone concentrations are also described in parts per billion (ppb). For example, 0.070 ppm is equivalent to 70 ppb.

110(a)(2).<sup>2</sup> One of these applicable requirements is found in section 110(a)(2)(D)(i), otherwise known as the good neighbor provision, which generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on other states due to interstate transport of pollution. There are four so-called “prongs” within CAA section 110(a)(2)(D)(i): section 110(a)(2)(D)(i)(I) contains prongs 1 and 2, while section 110(a)(2)(D)(i)(II) includes prongs 3 and 4. This action addresses the first two prongs under section 110(a)(2)(D)(i)(I). Under prongs 1 and 2 of the good neighbor provision, a SIP for a new or revised NAAQS must contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting air pollutants in amounts that will significantly contribute to nonattainment of the NAAQS in another state (prong 1) or from interfering with maintenance of the NAAQS in another state (prong 2). Under section 110(a)(2)(D)(i)(I) of the CAA, the EPA and states must give independent significance to prong 1 and prong 2 when evaluating downwind air quality problems under section 110(a)(2)(D)(i)(i)(I).<sup>3</sup>

We note that the EPA has addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) with respect to prior ozone NAAQS in several regional regulatory actions, including the Cross-State Air Pollution Rule (CSAPR), which addressed interstate transport with respect to the 1997 ozone NAAQS as well as the 1997 and 2006 fine particulate matter standards, and the Cross-State Air Pollution Rule Update for the 2008 ozone NAAQS (CSAPR

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<sup>2</sup> SIP revisions that are intended to meet the applicable requirements of section 110(a)(1) and (2) of the CAA are often referred to as infrastructure SIPs and the applicable elements under 110(a)(2) are referred to as infrastructure requirements.

<sup>3</sup> See *North Carolina v. EPA*, 531 F.3d 896, 909-911 (2008).

Update).<sup>4</sup> These actions only addressed interstate transport in the eastern United States<sup>5</sup> and did not address the 2015 ozone NAAQS.

Through the development and implementation of CSAPR, the CSAPR Update and previous regional rulemakings pursuant to the good neighbor provision,<sup>6</sup> the EPA, working in partnership with states, developed the following four-step interstate transport framework to address the requirements of the good neighbor provision for the ozone NAAQS:<sup>7</sup> (1) identify downwind air quality problems; (2) identify upwind states that impact those downwind air quality problems sufficiently such that they are considered “linked” and therefore warrant further review and analysis; (3) identify the emissions reductions necessary (if any), considering cost and air quality factors, to prevent linked upwind states identified in step 2 from contributing significantly to nonattainment or interfering with maintenance of the NAAQS at the locations of the downwind air quality problems; and (4) adopt permanent and enforceable measures needed to achieve those emissions reductions.

The EPA has released several documents containing information relevant to evaluating interstate transport with respect to the 2015 ozone NAAQS. First, on January 6, 2017, the EPA published a notice of data availability (NODA) with preliminary interstate ozone transport

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<sup>4</sup> See 76 FR 48208 (August 8, 2011) (*i.e.*, CSAPR) and 81 FR 74504 (October 26, 2016) (*i.e.*, CSAPR Update).

<sup>5</sup> For purposes of CSAPR and the CSAPR Update action, the Western U.S. (or the West) was considered to consist of the 11 western contiguous states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. The Eastern U.S. (or the East) was considered to consist of the 37 states east of the 11 Western states.

<sup>6</sup> Other regional rulemakings addressing ozone transport include the NO<sub>x</sub> SIP Call, 63 FR 57356 (October 27, 1998), and the Clean Air Interstate Rule (CAIR), 70 FR 25162 (May 12, 2005).

<sup>7</sup> The four-step interstate framework has also been used to address requirements of the good neighbor provision for some previous particulate matter and ozone NAAQS, including in the Western United States. See, *e.g.*, 83 FR 30380 (June 28, 2018) and 83 FR 5375, 5376-77 (February 7, 2018).

modeling with projected ozone design values for 2023, on which we requested comment.<sup>8</sup> The year 2023 was used as the analytic year for this preliminary modeling because that year aligns with the expected attainment year for Moderate ozone nonattainment areas.<sup>9</sup> On October 27, 2017, we released a memorandum (2017 memorandum) containing updated modeling data for 2023, which incorporated changes made in response to comments on the NODA.<sup>10</sup> Although the 2017 memorandum also released data for a 2023 modeling year, we specifically stated that the modeling may be useful for states developing SIPs to address remaining good neighbor obligations for the 2008 ozone NAAQS but did not address the 2015 ozone NAAQS. And, on March 27, 2018, we issued a memorandum (March 2018 memorandum) indicating the same 2023 modeling data released in the 2017 memorandum would also be useful for evaluating potential downwind air quality problems with respect to the 2015 ozone NAAQS (step 1 of the four-step framework). The March 2018 memorandum included newly available contribution modeling results to assist states in evaluating their impact on potential downwind air quality problems (step 2 of the four-step framework) in their efforts to develop good neighbor SIPs for the 2015 ozone NAAQS to address their interstate transport obligations.<sup>11</sup> The EPA subsequently issued two more memoranda in August and October 2018, providing guidance to states

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<sup>8</sup> See Notice of Availability of the Environmental Protection Agency's Preliminary Interstate Ozone Transport Modeling Data for the 2015 Ozone National Ambient Air Quality Standard (NAAQS), 82 FR 1733 (January 6, 2017).

<sup>9</sup> 82 FR 1735 (January 6, 2017).

<sup>10</sup> See Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), October 27, 2017, available in the docket for this action or at <https://www.epa.gov/interstate-air-pollution-transport/interstate-air-pollution-transport-memos-and-notices>.

<sup>11</sup> See Information on the Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), March 27, 2018, available in the docket for this action or at <https://www.epa.gov/interstate-air-pollution-transport/interstate-air-pollution-transport-memos-and-notices>.

developing good neighbor SIPs for the 2015 ozone NAAQS concerning, respectively, potential contribution thresholds that may be appropriate to apply in step 2 and considerations for identifying downwind areas that may have problems maintaining the standard (under prong 2 of the good neighbor provision) at step 1 of the framework.<sup>12</sup>

The March 2018 memorandum describes the process and results of the updated photochemical and source-apportionment modeling used to project ambient ozone concentrations for the year 2023 and the state-by state impacts on those concentrations. The March 2018 memorandum also explains that the selection of the 2023 analytic year aligns with the 2015 ozone NAAQS attainment year for Moderate nonattainment areas. As described in more detail in the 2017 and March 2018 memoranda, the EPA used the Comprehensive Air Quality Model with Extensions (CAMx version 6.40) to model average and maximum design values in 2023 to identify potential nonattainment and maintenance receptors (i.e., monitoring sites that are projected to have problems attaining or maintaining the 2015 ozone NAAQS). The March 2018 memorandum presents design values calculated in two ways: first, following the EPA’s historic “3 x 3” approach<sup>13</sup> to evaluating all sites, and second, following a modified approach for coastal monitoring sites in which “overwater” modeling data were not included in the calculation of future year design values (referred to as the “no water” approach).

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<sup>12</sup> See Analysis of Contribution Thresholds for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, August 31, 2018) (“August 2018 memorandum”), and Considerations for Identifying Maintenance Receptors for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, October 19, 2018, available in the docket for this action or at <https://www.epa.gov/airmarkets/memo-and-supplemental-information-regarding-interstate-transport-sips-2015-ozone-naaqs>.

<sup>13</sup> See March 2018 memorandum, p. 4

For purposes of identifying potential nonattainment and maintenance receptors in 2023, the EPA applied the same approach used in the CSAPR Update, wherein the EPA considered a combination of monitoring data and modeling projections to identify monitoring sites that are projected to have problems attaining or maintaining the NAAQS. Specifically, the EPA identified nonattainment receptors as those monitoring sites with measured values<sup>14</sup> exceeding the NAAQS that also have projected (i.e., in 2023) average design values exceeding the NAAQS. The EPA identified maintenance receptors as those monitoring sites with projected maximum design values exceeding the NAAQS. This included sites with measured values below the NAAQS but with projected average and maximum design values exceeding the NAAQS, and monitoring sites with projected average design values below the NAAQS but with projected maximum design values exceeding the NAAQS. The EPA included the design values and monitoring data for all monitoring sites projected to be potential nonattainment or maintenance receptors based on the updated 2023 modeling in Attachment B to the March 2018 memorandum.

After identifying potential downwind nonattainment and maintenance receptors, the EPA next performed nationwide, state-level ozone source-apportionment modeling to estimate the expected impact from each state to each nonattainment and maintenance receptor.<sup>15</sup> The EPA included contribution information resulting from the source-apportionment modeling in Attachment C to the March 2018 memorandum. For more specific information on the modeling

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<sup>14</sup> The EPA used 2016 ozone design values, based on 2014 – 2016 measured data, which were the most current data at the time of the analysis. *See* attachment B of the March 2018 memorandum, p. B-1.

<sup>15</sup> As discussed in the March 2018 memorandum, the EPA performed source-apportionment model runs for a modeling domain that covers the 48 contiguous United States and the District of Columbia, and adjacent portions of Canada and Mexico.

and analysis, please see the 2017 and March 2018 memoranda, the NODA for the preliminary interstate transport assessment, and the supporting technical documents included in the docket for this action.

In the CSAPR and the CSAPR Update, the EPA used a threshold of one percent of the NAAQS to determine whether a given upwind state was “linked” at step 2 of the four-step framework and would therefore contribute to downwind nonattainment and maintenance sites identified in step 1. If a state’s impact did not exceed the one percent threshold, the upwind state was not “linked” to a downwind air quality problem, and the EPA therefore concluded the state will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in the downwind states. However, if a state’s impact exceeded the one percent threshold, the state’s emissions were further evaluated in step 3, taking into account both air quality and cost considerations, to determine what, if any, emissions reductions might be necessary to address the good neighbor provision.

As noted previously, on August 31, 2018, the EPA issued a memorandum (the August 2018 memorandum) providing guidance concerning potential contribution thresholds that may be appropriate to apply with respect to the 2015 ozone NAAQS in step 2. Consistent with the process for selecting the one percent threshold in CSAPR and the CSAPR Update, the memorandum included analytical information regarding the degree to which potential air quality thresholds would capture the collective amount of upwind contribution from upwind states to downwind receptors for the 2015 ozone NAAQS. The August 2018 memorandum indicated that, based on the EPA’s analysis of its most recent modeling data, the amount of upwind collective contribution captured using a 1 ppb threshold is generally comparable, overall, to the amount captured using a threshold equivalent to one percent of the 2015 ozone NAAQS. Accordingly,



the EPA indicated that it may be reasonable and appropriate for states to use a 1 ppb contribution threshold, as an alternative to the one percent threshold, at step 2 of the four-step framework in developing their SIP revisions addressing the good neighbor provision for the 2015 ozone NAAQS.<sup>16</sup>

While the March 2018 memorandum presented information regarding the EPA's latest analysis of ozone transport following the approaches the EPA has taken in prior regional rulemaking actions, the EPA has not made any final determinations regarding how states should identify downwind receptors with respect to the 2015 ozone NAAQS at step 1 of the four-step framework. Rather, the EPA noted that states have flexibility in developing their own SIPs to follow different analytical approaches than the EPA's, so long as their chosen approach has an adequate technical justification and is consistent with the requirements of the CAA.

## **II. State Submission**

On September 25, 2018, Oregon submitted a SIP revision addressing the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2015 ozone NAAQS. Oregon relied on the results of EPA's modeling for the 2015 ozone NAAQS, contained in the March 2018 memorandum, to identify downwind nonattainment and maintenance receptors that may be impacted by emissions from sources in Oregon. Based on Oregon's review of EPA's modeling assumptions, model performance evaluation, and the modifications made in response to public comments, Oregon determined that EPA's future year projections were appropriate for purposes of evaluating Oregon's impact on attainment and maintenance of the 2015 ozone NAAQS in other states. For example, Oregon found that EPA's modeling used emissions inventory

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<sup>16</sup> See August 2018 memorandum, p. 4.

projections that accounted for state rules, announced shut downs of electric generating units such as the 2020 shutdown of the Boardman power plant, and included Oregon’s adoption of California’s Low Emission Vehicles III program.<sup>17</sup> Thus, Oregon concurred with the EPA’s photochemical modeling results that indicate Oregon’s greatest impact on any potential downwind nonattainment or maintenance receptor would be 0.57 ppb. Oregon compared these values to a screening threshold of 0.70 ppb, representing one percent of the 2015 ozone NAAQS, and concluded that because none of Oregon’s impacts exceed this threshold, emissions from Oregon sources will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

### **III. EPA Evaluation**

As previously discussed, the March 2018 memorandum identifies potential downwind nonattainment and maintenance receptors, using the definitions applied in the CSAPR Update and using both the “3 x 3” and the “no water” approaches to calculating future year design values. The March 2018 memorandum identifies 57 potential nonattainment and maintenance receptors in the West in Arizona (2), California (49), and Colorado (6).<sup>18</sup> The March 2018 memorandum also provides contribution data regarding the impact of other states on the potential receptors. For purposes of evaluating Oregon’s 2015 ozone NAAQS interstate transport SIP submission, we propose that, at least where a state’s impacts are less than one percent to

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<sup>17</sup> See “Oregon State Implementation Plan Revision Addressing the Interstate Transport of Ozone (O<sub>3</sub>),” p. 5, October 2018.

<sup>18</sup> The number of receptors in the identified western states is 57, irrespective of whether the “3 x 3” or “no water” approach is used. Further, although the EPA has indicated that states may have flexibilities to apply a different analytic approach to evaluating interstate transport, including identifying downwind air quality problems, because the EPA is also concluding in this proposed action that Oregon will have an insignificant impact on any potential receptors identified in its analysis, Oregon need not definitively determine whether the identified monitoring sites should be treated as receptors for the 2015 ozone standard.

downwind nonattainment and maintenance sites, it is reasonable to conclude that the state's impact will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state. This is consistent with our prior action on Oregon's SIP with respect to the 2008 ozone NAAQS<sup>19</sup> and with the EPA's approach to both the 1997 and 2008 ozone NAAQS in CSAPR and the CSAPR Update. The EPA notes, nonetheless, that consistent with the August 2018 memorandum, it may be reasonable and appropriate for states to use a 1 ppb contribution threshold, as an alternative to a one percent threshold, at step 2 of the four-step framework in developing their SIP revisions addressing the good neighbor provision for the 2015 ozone NAAQS. However, for the reasons discussed below, it is unnecessary for the EPA to determine whether it may be appropriate to apply a 1 ppb threshold for purposes of this action.

The EPA's updated 2023 modeling discussed in the March 2018 memorandum indicates that Oregon's largest impact on any potential downwind nonattainment and maintenance receptor in the West are 0.57 ppb and 0.45 ppb, respectively.<sup>20</sup> These values are less than 0.70 ppb (one percent of the 2015 ozone NAAQS),<sup>21</sup> and as a result, demonstrate that emissions from Oregon are not linked to any 2023 downwind potential nonattainment and maintenance receptors identified in the March 2018 memorandum. The projected impacts from Oregon to potential receptors in the East is even lower. Accordingly, we propose to conclude that emissions from

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<sup>19</sup> 80 FR 79266 (December 21, 2015).

<sup>20</sup> The EPA's analysis indicates that Oregon will have a 0.57 ppb impact at the potential nonattainment receptor in Sacramento, California (Site ID 60670012), which has a 2023 projected average design value of 74.5 ppb, a 2023 projected maximum design value of 75.9 ppb, and had a 2014-2016 design value of 83 ppb. The EPA's analysis further indicates that Oregon will have a 0.45 ppb impact at a potential maintenance receptor in Sacramento, California (Site ID 60675003), which has which has a projected 2023 average design value of 69.9 ppb, a 2023 projected maximum design value of 88 ppb, and had a 2014-2016 design value of 80 ppb. *See* the March 2018 memorandum, attachment C.

<sup>21</sup> Because none of Oregon's impacts exceed 0.70 ppb, they necessarily also do not exceed the 1 ppb contribution threshold discussed in the August 2018 memorandum.

Oregon will not contribute to any potential receptors, and thus, the state will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state.

We also note that the EPA has assessed potential transport to the Shoshone-Bannock Tribes of the Fort Hall Reservation in southeast Idaho, which the EPA approved to be treated as an affected downwind state for CAA sections 110(a)(2)(D) and 126. While the Shoshone-Bannock Tribes do not operate an ozone monitor, the nearest ozone monitors to the Fort Hall Reservation are in Ada County, Idaho, in the Boise area and in Butte County, Idaho, in the Idaho Falls area. As discussed previously, the EPA's modeling did not identify receptors in Idaho and the ozone monitoring sites nearest to the Fort Hall Reservation were projected to remain below the current standard. For the Idaho Falls area monitoring site (Site ID 160230101), which had a 2014-2016 design value of 60 ppb, the EPA's modeling projects a 2023 maximum design value of 60.2 ppb and a 2023 average design value of 59.6 ppb, both below the 70 ppb standard. For the Boise area monitoring site with the highest projected ozone concentrations (Site ID 160010017), which had a 2014-2016 design value of 67 ppb, the EPA's modeling projects a 2023 maximum design value of 59.8 ppb and a 2023 average design value of 59.4 ppb.<sup>22</sup> We therefore propose to find that emissions from Oregon will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS at the Fort Hall Reservation.

#### **IV. Proposed Action**

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<sup>22</sup> In attachment A of the 2017 memorandum, the EPA provided the projected ozone design values at individual monitoring sites nationwide. The data for the Idaho monitors is presented on page A-10.

As discussed in section II, Oregon concluded that emissions from sources in the state will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state. The EPA's evaluation of Oregon's submission, discussed in section III, confirms this finding. We are proposing to approve the Oregon submission as meeting CAA section 110(a)(2)(D)(i)(I) requirements for the 2015 ozone NAAQS. The EPA is requesting comments on the proposed approval.

## **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because it does not involve technical standards; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The proposed SIP would not be approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

## **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: February 8, 2019.

Chris Hladick,  
Regional Administrator,  
Region 10.

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